

**TWIN FALLS, FRIDAY, NOVEMBER 7, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**SADDLEHORN RANCH LANDOWNER'S, )  
INC.; WILLIAM CHENEY; NATHAN )  
GASTON; ROBERT KRECHTER; )  
MICHAEL & TRACY MC FADIN; )  
THOMAS PHILLIPS; LAWRENCE M. )  
THOMPSON, )**

**Docket No. 34605**

**Plaintiffs-Counterdefendants- )  
Respondents-Cross Appellants, )  
v. )**

**CHRISTY B. DYER; DAN DYER; and )  
CHRISTY B. DYER as trustee of the )  
CHRISTY B. DYER CHILDREN'S TRUST )  
FUND, )**

**Defendants-Counterclaimants- )  
Appellants-Cross Respondents. )**

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Appeal from the Seventh Judicial District of the State of Idaho, Teton County.  
Hon. Jon J. Shindurling, District Judge.

Holden, Kidwell, Hahn & Crapo, PLLC, Idaho Falls, for appellant.

Pike & Miller, P.A., Driggs, for respondent.

Roy H. Andes, Helena, Montana, *pro hac vice*.

This case arises out of two disputed parcels in the Saddlehorn Ranch subdivision between the Saddlehorn Ranch homeowners (the Association) and Christy and Dan Dyer, husband and wife, (the Dyers) and Christy Dyer as trustee of the Christy B. Dyer Children's trust fund.

The central issue of this case arises out of two disputed parcels of property within the Saddlehorn Ranch subdivision, previously the Le Emeraude subdivision. The parcels are labeled as "R" lots on a plat recorded in 1996 by Christy Dyer. The plat legend defines "R" lots as "Reserved." Lot 1-R is labeled as "Gravel Pit and Future Recreation Lot" and lot 4-R is labeled as "Recreation Center." The Dyers contend that they are the owners of the lots and that the Association has no rights to use the lots. The Association claims ownership in the lots for recreational purposes. The district court granted the Association an easement in the lots under the theory of common law dedication, but specified that the Dyers hold title in the lots. Both parties appeal that decision to this Court.

**TWIN FALLS, FRIDAY, NOVEMBER 7, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

<b>BAUCHMAN-KINGSTON PARTNERSHIP,</b>	)	
<b>LP,</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 34551</b>
	)	
<b>MELVEN J. HAROLDSSEN and JANE DOE</b>	)	
<b>HAROLDSSEN,</b>	)	
	)	
<b>Defendants-Respondents.</b>	)	

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Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Honorable Gregory S. Anderson, District Judge.

Cox, Ohman & Brandstetter, Chartered, Idaho Falls, for appellant.

Wright Wright & Johnson, PLLC, Idaho Falls, for respondent.

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Melven Haroldsen and Bauchman-Kingston Partnership, LP, entered into an agreement in which Haroldsen would sell 204.9 acres to Bauchman-Kingston in four increments over a five year period. The first three increments involved the sale of acreage for a set price per acre, while the final 4.9 acres, which included a residence and outbuildings, was to be sold at fair market value. After completing the sale of 200 acres, the parties could not agree on the fair market value of the residence, outbuildings, and final 4.9 acres. Haroldsen refused to sell at the price Bauchman-Kingston's appraiser had set as the fair market value, and Bauchman-Kingston refused to purchase at the price Haroldsen believed was the fair market value.

Bauchman-Kingston sued Haroldsen and his wife for specific performance. On cross-motions for summary judgment, the district court granted summary judgment for the Haroldsens on the grounds that the property description in the agreement was inadequate. Bauchman-Kingston appeals to this Court, and argues that the property description is adequate, and that it is entitled to specific performance under the doctrine of part performance.

**TWIN FALLS, FRIDAY, NOVEMBER 7, 2008 AT 11:10 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**PHH MORTGAGE SERVICE CORP., its  
successors and/or assigns,**

**Plaintiffs-Counterdefendants-**

**Respondents,**

**v.**

**TIMOTHY A. PERREIRA, ANN M  
PERREIRA, MAVIS M. ANESTOS,**

**Defendants-Counterclaimants-**

**Appellants,**

**and**

**DOES I through X, inclusive,**

**Defendants-Counterclaimants.**

**Docket No. 34764**

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho,  
Minidoka County. Hon. John K. Butler, District Judge.

Robinson and Associates, Rupert, for Appellants.

Just Law Office, Idaho Falls, for Respondent.

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This is an appeal from the district court's order of partial summary judgment granting possession of certain real property located at 460 S. 850 W. Heyburn, ID ("the property") to PHH Mortgage Service Corp. ("PHH").

On March 12, 1999, Timothy Perreira, Anna Perreira ("the Perreiras") and Mavis Anestos executed a deed of trust offering certain unimproved real property as security on a promissory note. The beneficiary of the note, U.S. Bank, transferred the beneficial interest to PHH (f/k/a Cendant Mortgage Corp.). The Perreiras eventually defaulted on the note.

On February 10, 2003, PHH issued a Special Warranty Deed to Federal National Mortgage Assoc., which was recorded on February 25, 2003. PHH caused a trustee's sale of the property to occur on February 20, 2003. The sale violated an automatic stay in place due to Anestos' pending bankruptcy. There is no dispute that the sale was improper.

After Mavis Anestos passed away in July 2005, PHH obtained a lift from the bankruptcy stay and caused another trustee's sale to occur on July 21, 2006. PHH purchased the property via a creditor's bid at the sale.

PHH then filed a complaint for possession of the property with the district court and moved for summary judgment. The district court granted partial summary judgment in favor of PHH pertaining to possession of the property, except as to the manufactured home located on the premises. The only issue remaining for trial is whether PHH failed to reimburse insurance payments to the Perreiras. The district court executed a Rule 54(b) certificate with its order of partial summary judgment.

On appeal, the Perreiras make six arguments as to why partial summary judgment was inappropriate: (1) PHH was not the owner of the note and the deed of trust because of the Special Warranty Deed issued to Federal National Mortgage Assoc., therefore either PHH is not entitled to possession of the property, or failed to include a record of the conveyance from Federal National Mortgage Assoc. to PHH in violation of I.C. §45-1505; (2) the district court should have considered whether PHH failed to make proper accountings, which prevented the Perreiras from determining their monthly payment amounts and lead to their ultimate default, before granting partial summary judgment; (3) the district court erred in ruling that PHH was a good faith purchaser at the trustee's sale, and, therefore, did not violate I.C. §45-1506 by failing to send notice of the foreclosure and sale to the Estate of Anestos; (4) the district court erred by not addressing their Truth in Lending Act claim in the partial summary judgment order; (5) the district court abused its discretion by ruling judicial estoppel is not applicable to this case; (6) the district court abused its discretion by issuing the Rule 54(b) certificate prematurely, preventing the Perreiras from presenting evidence they believe is dispositive.

PHH contends it is the owner of record because the automatic stay provisions of the federal bankruptcy proceedings bars a trustee's sale and renders any subsequent conveyance void. PHH argues the issue of accounting is not relevant to this action. PHH also asserts it was good faith purchaser and therefore entitled to possession of the property despite any potential notice defects pursuant to I.C. §45-1508. PHH also argues the Perreiras lack standing to argue lack of notice to the Estate of Anestos. PHH also alleges that since the Perreiras failed to make a claim for relief under the Truth in Lending Act to the district court, they cannot raise the issue on appeal. Finally, PHH argues the district court did not abuse its discretion concerning judicial estoppel or in executing the Rule 54(b) certificate.